

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation**      **MDL No. 1358 (SAS)**

**This Document Relates To:**

*City of Merced Redevelopment Agency v. Exxon  
Mobil Corp., et al., 08 Civ. 06306 (SAS)*

**SECOND DECLARATION OF WHITNEY JONES ROY IN SUPPORT OF  
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE NUISANCE  
AND TRESPASS**

DECLARATION OF WHITNEY JONES ROY

I, Whitney Jones Roy, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Sheppard, Mullin, Richter & Hampton LLP, attorneys of record for Defendant Exxon Mobil Corporation. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

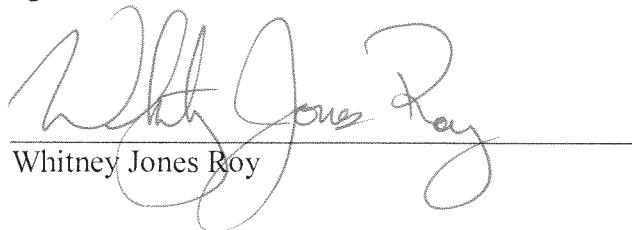
2. This declaration is submitted in support of Defendants' Reply in Support of Motion for Partial Summary Judgment re Nuisance and Trespass. Because the RDA's Opposition to Defendants' Motion cites to several pieces of evidence out of context, it is necessary to submit this declaration to provide the Court with the relevant context.

3. Attached hereto as **Exhibit 14** is a true and correct copy of the relevant portions from the deposition of Albert Liguori taken on October 12, 2000.

4. Attached hereto as **Exhibit 15** is a true and correct copy of the relevant portions of the deposition of J.P. Randhawa take on August 26, 2009.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed May 15, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Whitney Jones Roy

**Second Roy Declaration re MSJ re Nuisance & Trespass  
Exhibit 14**

Liguori Albert 10-12-00 (VOL I).txt

00000

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 --00o--

4 SOUTH TAHOE PUBLIC UTILITY )  
5 DISTRICT, )

6 Plaintiff, )

7 vs ) No. 999128

8 ATLANTIC RICHFIELD COMPANY )  
9 ("ARCO"); et al., )

VOLUME I

9 Defendants. )

10 THIS TRANSCRIPT  
11 CONTAINS  
12 CONFIDENTIAL  
13 MATERIALS

14 COMMUNITIES FOR A BETTER  
15 ENVIRONMENT, a California  
16 Non-Profit Corporation, on  
17 behalf of the General Public, )

18 Plaintiff, )

19 vs ) No. 997013

15 UNOCAL CORPORATION, a Delaware  
16 corporation, et al., )

17 Defendants. )

18 --00o--

19 THURSDAY, OCTOBER 12, 2000  
20 10:18 A.M.

21 --00o--

22 DEPOSITION OF  
23 ALBERT E. LIGUORI

24 --00o--

25 CATHLEEN SLOCUM, CSR  
26 License No. 2822

000001

1 COUNSEL

2

3 For the Plaintiff:

4

MILLER, SHER & SAWYER  
BY: VICTOR M. SHER, ESQ.  
100 Howe Avenue, Suite S-120  
Page 1

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14 said he's not aware of one either. Are you aware of a  
15 copy, a remaining copy somewhere of the draft of the  
16 report?

17 A Not within my files.

18 Q Okay. In the middle of the first page of Exhibit  
19 13 there's a reference to a correction on page 15 as  
20 follows, "Remove the sentence 'Environmental presence  
21 is defined as a station with a groundwater monitoring  
22 program (approximately half)" --

23 A Excuse me, I'm not with you yet.

24 Q Okay. Do you see three paragraphs up from the  
25 bottom of the page?

000133

1 A Page 15.

2 Q "Remove the sentence"?

3 A I'm, I'm with you now.

4 Q All right. Okay. It says, "Remove the sentence  
5 'Environmental presence is defined as a station with a  
6 groundwater monitoring program (approximately half of  
7 the roughly 450 sites in" New Jersey "'have  
8 environmental presence).'" Do you see that?

9 A Yes, I do.

10 Q Do you know what that refers to?

11 A The presence of MTBE in groundwater samples that  
12 were analyzed during regular quarterly monitoring.

13 Q When it says approximately half of the roughly  
14 450 sites in New Jersey have environmental presence,  
15 is that 450 retail sites, 450 sites with groundwater  
16 monitoring programs or something else?

17 A It's my understanding that it's 450 retail sites.

18 Q Oh, I know what I wanted to ask you. Go back to  
19 Exhibit 9, please. If you look at the page near the  
20 beginning that's Bates stamped 7259 --

21 A I see it.

22 Q -- it's a diagram that is titled, "Impact of  
23 Small Releases." Are you there?

24 A Yes, I am.

25 Q Can you explain what this diagram shows?

000134

1 A This is what we call a cartoon of a hypothetical  
2 situation that was to help those that we were doing  
3 the study for to gain an appreciation of the amount of  
4 gasoline containing MTBE that might be introduced into  
5 the subsurface and what the corresponding  
6 concentrations would be for volumes of water that are  
7 shown here of 1,000, 10,000, 100,000, and one million  
8 liters. And it's a way of giving quick appreciation  
9 to the fact that what we were searching for in terms  
10 of potential sources would have to be on the level of  
11 teaspoonsfuls of gasoline somewhere within the system  
12 from where product is delivered to a retail station,  
13 moved through the lines and into the on-site

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14 underground storage tanks.

15 And I should emphasize that this is purely  
16 hypothetical. It's what would be called a bathtub  
17 model. It would, it precludes, it assumes perfect  
18 mixing injecting directly into the water. It doesn't  
19 replicate the situation you would have at any  
20 particular site at a retail station. It's assuming  
21 perfect conditions that would never exist in reality.  
22 But it gives an upper bound or a lower bound,  
23 depending on how you want to look at it, as to the  
24 magnitude of the problem. In reality it would be the  
25 concentrations that we show for various volumes of

000135

1 water would be a lot lower, but nevertheless it still  
2 gives you an intuitive feel for how small of a volume  
3 could result in giving you the concentrations that  
4 might trigger monitoring and/or remediation.

5 Q So let me, let me make sure that I understand the  
6 cartoon and then ask you some questions about what you  
7 just said. If you had a teaspoon of gasoline that  
8 contained 11 and a half percent by volume MTBE and it  
9 were perfectly dissolved in 1,000 gallons of water --

10 A Liters of water.

11 Q I'm sorry, 1,000 liters of water --

12 A Right.

13 Q -- which is something a little less than 250  
14 gallons of water?

15 A I believe that's correct.

16 Q Okay. Then you would have MTBE at 413 parts per  
17 billion?

18 A A concentration -- now that, that's a teaspoonful  
19 of gasoline being approximately five  
20 milliliters --

21 Q Right.

22 A -- and gasoline containing benzene at one and a  
23 half percent and MTBE at 11 and a half percent.

24 Q Okay. Now, what if -- on the left-hand side of  
25 this cartoon there's a scale that refers to the volume

000136

1 of groundwater in liters going from zero to 100 --

2 A To a million.

3 Q -- to a million. And then the first dark circle  
4 that's labeled 1,000, is there any, is there any  
5 correlation between the 1,000 and the volume on the  
6 scale to the left?

7 A It's -- no, there isn't. It's too small to  
8 blot --

9 Q Okay.

10 A -- in relation to the other volumes. The million  
11 liter of course is accurate in this cartoon. The  
12 100,000 is accurate. But given the scale here, we  
13 would have had to have a much larger page to show the

Liguori Albert 10-12-00 (VOL I).txt

14 actual proportional relationship between the 10,000  
15 liter and the 1,000 liter.  
16 Q Okay. And at the same teaspoon of gas if  
17 thoroughly mixed and dissolved --  
18 A Right.  
19 Q -- in 100,000 liters of water would be four parts  
20 per billion?  
21 A That's correct.  
22 Q And at a million liters of water it's 0.4 parts  
23 per billion?  
24 A That's correct.  
25 Q Now, you said that you thought that the actual

000137

1 concentrations in the real world would be  
2 substantially lower?  
3 A In a well at an actual site collecting water,  
4 groundwater from an aquifer, it would be much lower.  
5 Q And why is that?  
6 A Because you have to account for the volume of  
7 water that could exist in the pore space of a  
8 particular soil stratigraphy, various layers. Silt  
9 soils would have a much less available space in  
10 between the soil particles for any liquid to permeate  
11 into. Correspondingly soils and gravels would have  
12 more void space available in which product could seep  
13 into, that liquid could seep into whether it was  
14 product or groundwater or combinations thereof.  
15 The -- it's hard to be able to be descriptive  
16 enough for all the conditions that you can encounter  
17 because you'll have varying combinations of soil,  
18 depth to groundwater, whether or not the site is paved  
19 and prevents any liquids from the surface even  
20 penetrating into the subsurface and eventually into  
21 any groundwater tables that exist under the site or  
22 near the surface of a particular site.  
23 Q Assuming that the teaspoon of gasoline which was  
24 released at a site actually all made it into the  
25 groundwater, then these concentrations would be

000138

1 accurate, wouldn't they?  
2 A Still not would be accurate.  
3 Q Why not?  
4 A Because it would take time for it to, for the  
5 gasoline to dissolve into the groundwater. At these  
6 low levels it would be hard to say whether it would be  
7 instantaneous, whether it would take a long period of  
8 time. It would depend on the soil conditions. It  
9 would depend on how much of the gasoline was absorbed  
10 by soil particles, how much residual product would be  
11 remaining within the pore space of the soil layers.  
12 This is something that was intended to be  
13 very simplistic and just to give order of magnitude

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14 appreciation for the management of Exxon USA as to  
15 what levels we were talking about.  
16 Q I don't have the conversion factors at the tip of  
17 my tongue here, but roughly how many teaspoons are  
18 there in a gallon?  
19 A I don't know.  
20 MR. SHER: Let's go off the record for a  
21 minute.  
22 THE VIDEOGRAPHER: Going off record. Time  
23 now is 4:49.  
24 (Thereupon a brief recess was taken.)  
25 THE VIDEOGRAPHER: Going back on record.

000139

1 Time now is 4:50.  
2 MR. SHER: Q We've been talking about your  
3 study, that is, Exxon Research and Engineering Company  
4 study for Exxon USA concerning release source  
5 identification at retail sites. In the documents that  
6 I reviewed that counsel gave me this morning there  
7 were some references to a PERF project that at least  
8 on its face seemed to have some overlap with your  
9 project. Does that ring a bell for you?  
10 A In general PERF rings a bell. I'm aware of the  
11 organization and some of the projects that they have  
12 undertaken in site remediation.  
13 Q What does PERF stand for to your understanding?  
14 A The Petroleum Environmental Research Forum.  
15 (Thereupon a document was marked by the  
16 reporter as Exhibit 14 for identification.)  
17 MR. SHER: Q Okay. I'm handing you what  
18 we've marked as Exhibit 14 to your deposition. This  
19 is a document titled, "PERF Project Status Report  
20 12/98," and the Bates range on this set of documents  
21 as it was produced to us is 6604 through 6608.  
22 Do you need a moment to review this?  
23 A Please.  
24 MR. SHER: Let's go off the record.  
25 THE VIDEOGRAPHER: Going off record. Time

000140

1 now is 4:51.  
2 (Thereupon a brief recess was taken.)  
3 THE VIDEOGRAPHER: Go back on record. Time  
4 now is 4:53.  
5 MR. SHER: Q Do you recognize what we've  
6 marked as Exhibit 14?  
7 A Yes, I do.  
8 Q And what is this?  
9 A It's a package containing on the first page a  
10 quarterly status report that was prepared for December  
11 1998 on a hoped for PERF project related to or titled,  
12 "Key Environmental Issues Concerning MTBE" with the  
13 objective of developing a full project proposal

14 Liguori Albert 10-12-00 (VOL I).txt  
14 forward with.

15 MR. SHER: And I'm also willing to continue  
16 tomorrow morning, but I understand that won't work for  
17 the witness.

18 MR. ESSMYER: That's my understanding.

19 MR. SHER: Okay.

20 THE VIDEOGRAPHER: In the deposition of  
21 Albert Liguori, this marks the end of videotape  
22 three.

23 Going off record. The time now is 5:27.

24 ///  
25 ///

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1 (Thereupon the Deposition of ALBERT E.  
2 LIGUORI was adjourned at 5:27 p.m.)  
3  
4

5 ALBERT E. LIGUORI  
6

7 DATED:  
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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER  
2

3 I, CATHLEEN S. SLOCUM, a Certified Shorthand  
4 Reporter, in and for the State of California, duly  
5 appointed and commissioned to administer oaths, do  
6 hereby certify:

7 That I am a disinterested person herein; that  
8 the witness, ALBERT E. LIGUORI, named in the foregoing  
9 deposition, was by me duly sworn to testify the truth,  
10 the whole truth, and nothing but the truth; that the  
11 deposition was reported in shorthand by me, Cathleen  
12 S. Slocum, a Certified Shorthand Reporter of the State

13 Liguori Albert 10-12-00 (VOL I).txt  
13 of California, and thereafter transcribed into  
14 typewriting.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand as Certified Shorthand Reporter on this \_\_\_\_\_ of  
17 October, 2000.

18

19

20

21 Cathleen Slocum  
22 Certified Shorthand Reporter  
23 License Number 2822

24 --00--  
25

	E X H I B I T S	
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2	10 Draft EE Proposal to EUSA, Source	Page
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**Second Roy Declaration re MSJ re Nuisance & Trespass  
Exhibit 15**

Deposition of J.P. Randhawa / August 26, 2009

Page 1

1       IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
2                    IN AND FOR THE COUNTY OF MERCED

2                    -000-

3       CITY OF MERCED,

4                    Plaintiff,

5       vs.

Case No. 148451

6       CHEVRON U.S.A., INC.; SHELL OIL  
7       COMPANY; EXXONMOBIL CORPORATION;  
8       EXXON CORPORATION; KINDER MORGAN  
9       ENERGY PARTNERS L.P.; EQUIILON  
ENTERPRISES LLC; SFPP, L.P. and  
DOES 1 THROUGH 200, inclusive,

10                   Defendants.

11                    /

12

13

14                   DEPOSITION OF J.P. RANDHAWA

15                   August 26, 2009 at 9:00 a.m.

16                   Before: ERIC L. JOHNSON  
RPR, CSR #9771

17                   Taken at:  
Merced, California

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Deposition of J.P. Randhawa / August 26, 2009

Page 17

1 contractor for the upgrades or give you a list of people  
2 that were qualified to do that?

3 A. No.

4 Q. Did Dickey Oil do that?

5 A. No, I don't think so.

6 Q. Did you find this contractor on your own?

7 A. Somebody recommended me, because I have a  
8 cousin who also owns a gas station so I think he used  
9 Westar a few times.

10 Q. And he was happy with their services?

11 A. He was, but I wasn't, after.

12 Q. Okay. Did anyone else assist you with the  
13 upgrades, that you haven't mentioned at some time this  
14 morning?

15 A. Anybody else? No.

16 Q. From the time you acquired the station until  
17 you shut it down to do the upgrades, were any of the  
18 dispensers replaced or repaired, to your knowledge?

19 MR. TEMKO: I am sorry. Can you reread the  
20 question, please?

21 MR. MILLER: From the time you first acquired  
22 the station in 1994, until you shut the station down to  
23 do the upgrades --

24 A. Okay.

25 Q. -- were any of the dispensers repaired or

Deposition of J.P. Randhawa / August 26, 2009

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1 site. A large quantity of soil was generated from the  
2 UST removal activities. The soil stock pile remains on  
3 site. The soil stock pile shall be covered with plastic  
4 immediately to prevent any further volatilization and  
5 characterized analytically in order to determine proper  
6 off-site disposal." And then after the word  
7 "analytically" in parenthesis it has the names of  
8 several gasoline constituents, including MTBE.

9 Do you see that entry?

10 A. Yeah.

11 Q. During the time the soil was piled up on the  
12 property, did somebody cover it?

13 A. Yeah.

14 Q. Do you know if samples were taken to find out  
15 how much gasoline might be present in it, so you could  
16 dispose of it properly?

17 A. I don't know.

18 Q. Did you have anybody testing the soil on your  
19 behalf, as opposed to letting the county do it?

20 A. No.

21 Q. When the tank upgrades were done, was it your  
22 understanding that you were installing double walled  
23 tanks?

24 A. Yes.

25 Q. And that they were made of fiberglass?

Deposition of J.P. Randhawa / August 26, 2009

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1 A. Yes.

2 Q. Did that differ from the old tanks?

3 A. Yes.

4 Q. Was one of the differences that the old tanks  
5 didn't have double walled tanks or pipes?

6 A. Yes.

7 Q. But the new system did.

8 A. Yeah.

9 Q. Was it your understanding that was an  
10 improvement in terms of reducing the chance that  
11 gasoline would get out in the environment, that is,  
12 having double walled pipes and tanks?

13 A. I don't know.

14 Q. Before you replaced your underground storage  
15 tanks, do you know if there was any sump under the  
16 dispensers to hold any liquid that escaped the pipes or  
17 the dispenser?

18 A. I don't remember.

19 Q. Do you know what a bravo box is?

20 A. No.

21 Q. Do you know if there was any type of  
22 containment, sometimes they put plastic pans under  
23 dispensers, sometimes they put concrete sums, they have  
24 a number of devices, one of them is called a bravo box.

25 A. Are you aware of any type of containment that

Deposition of J.P. Randhawa / August 26, 2009

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1 is under your dispensers now?

2 A. Yeah. Right now, I mean, there's like a --  
3 like big -- I think it is probably about four feet under  
4 the dispensers. It is like metal.

5 Q. Okay. Is it -- strike that.

6 Is it your understanding that that's an area  
7 you can check to make sure that no liquid is coming out  
8 of the dispensers?

9 A. Yes. It has sensors so if there is any liquid,  
10 I will get a notice inside.

11 Q. Electronically and automatically?

12 A. Electronically and automatically, yes.

13 Q. Did you first have that type of electronic  
14 automatic notice that there was a leak near the  
15 dispensers after you upgraded the station?

16 A. No.

17 Q. What I am trying to find out is did you -- when  
18 did you first get this system that gave you an automatic  
19 electronic notice if there was any leak noted under your  
20 dispenser?

21 A. '99. June '99.

22 Q. With the new system?

23 A. With the new system.

24 Q. Before June '99, was there any automatic leak  
25 detector for any aspect of the gasoline storage systems

Deposition of J.P. Randhawa / August 26, 2009

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1 or pipes?

2 A. I don't think so.

3 Q. And before the upgrades in June of 1999, do you  
4 remember any pan being underneath the dispensers to  
5 catch liquid?

6 A. I don't know.

7 Q. You can't say one way or the other whether or  
8 not there was one?

9 A. I don't know.

10 Q. You don't remember spending money to install  
11 containment under the dispensers, before the work was  
12 started, that led to the upgrades in June of '99,  
13 correct?

14 A. Yeah.

15 MR. MILLER: Okay. Exhibit 11 is another  
16 letter to you. This one is dated April 21, 1999.

17 (Deposition Exhibit 11 marked  
18 for identification)

19 MR. MILLER: Q. Would you have received this  
20 letter?

21 MS. JONES-ROY: Calls for speculation.

22 THE WITNESS: I don't remember.

23 MR. MILLER: Q. It is addressed to you in  
24 Livingston, California.

25 A. Yeah.

Deposition of J.P. Randhawa / August 26, 2009

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1 MR. TEMKO: Object; asked and answered;  
2 mischaracterizes the prior testimony.

3 THE WITNESS: I was there, but I don't know  
4 when and how long I was there.

5 MR. MILLER: Q. When you were there, was the  
6 stockpiled soil covered with plastic?

7 MR. TEMKO: Object; vague and ambiguous.

8 THE WITNESS: Yes.

9 MR. MILLER: Q. At some point, did you learn  
10 that the case had been taken over by the Regional Board  
11 and was no longer being handled by the county, as far as  
12 the cleanup was concerned?

13 A. Yeah.

14 Q. Do you remember when you learned that?

15 A. I don't remember that.

16 Q. Were you ever told why the Regional Board took  
17 over the cleanup from the county?

18 A. No.

19 Q. When you installed your new double walled  
20 underground storage tank and piping, the new system, did  
21 you have any information there was ever a release of  
22 gasoline from that new system?

23 A. New system, no.

24 Q. And has anyone ever claimed there was a release  
25 from the new system? Ever told you they thought the new

Deposition of J.P. Randhawa / August 26, 2009

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1 one leaked?

2 A. No.

3 Q. Did you ever hear reports that people with the  
4 Regional Board thought there was a leak at the Cardgas  
5 site after you upgraded your tanks?

6 A. No.

7 Q. Did you ever do anything to inspect the Cardgas  
8 facility, or watch when somebody else was inspecting the  
9 facility, to see if there was an indication of a  
10 release?

11 A. No.

12 Q. Did you ever walk around on the Cardgas site  
13 with any governmental inspector?

14 A. I don't remember.

15 Q. Were you ever told that they found more than  
16 four feet of gas floating on top of the groundwater in a  
17 monitoring well near the underground storage tanks for  
18 the cardlock station?

19 MS. VANDERLAAN-SMITH: Objection; assumes facts  
20 not in evidence.

21 THE WITNESS: I don't remember that either.

22 MR. MILLER: Q. Did you meet one or more of  
23 the owners of the cardlock station in some of these  
24 meetings? The ones with the city.

25 A. Yeah, Brian Pazin.

Deposition of J.P. Randhawa / August 26, 2009

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1 Q. You mentioned that when you closed the station,  
2 you switched from using Courtesy Oil to using Dickey  
3 Petroleum.

4 Do you recall that testimony?

5 A. Yes.

6 Q. Was the reason that you switched because Dickey  
7 was offering to help you do the cleanup; is that right?

8 A. Not the cleanup, but the -- they were offering  
9 me \$79,000.

10 Q. For the upgrade?

11 A. For the upgrade, yeah.

12 Q. Sorry. Did you ask Courtesy Oil whether they  
13 would be willing to give you money to do that?

14 A. No.

15 Q. Did you -- did courtesy ask that they continue  
16 to be a distributor for you?

17 A. I don't remember that.

18 Q. I want to clarify, Mr. Miller asked you about  
19 something called an MSDS.

20 Do you recall that?

21 A. Mm-hmm. Yeah, he asked me something about  
22 that.

23 Q. And I think you said that you don't know what  
24 that is.

25 A. I don't know.

**PROOF OF SERVICE VIA FILE AND SERVE XPRESS**

*City of Merced Redevelopment Agency v. Exxon Mobil Corp., et al.*

I, Laverna A. Henry, the undersigned, hereby declare:

1. I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. I am employed by Sheppard, Mullin, Richter & Hampton LLP in the City of Los Angeles, State of California. My business address is 333 South Hope Street, 48<sup>th</sup> Floor, Los Angeles, California 90071.

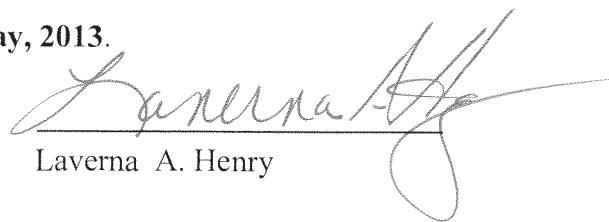
2. On **May 15, 2013**, I served a copy of the attached document titled ***SECOND DECLARATION OF WHITNEY JONES ROY IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE NUISANCE AND TRESPASS*** on all parties hereto by:

a. X Posting it directly to the File & Serve Xpress website,  
[www.lexisnexis.com/fileandserv](http://www.lexisnexis.com/fileandserv)

b. \_\_\_\_\_ Sending it via facsimile transmission to LexisNexis File & Serve at approximately \_\_\_\_\_ Pacific Time

c. \_\_\_\_\_ Placing it in an addressed, sealed envelope clearly labeled to LexisNexis File & Serve and causing it to be deposited with an overnight mail or courier service for delivery the next business day.

I declare under penalty under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of **May, 2013**.



Laverna A. Henry